A

VETILL MINERALS SDN BHD v. DATO' GHAZALI KASIM & ANOR

COURT OF APPEAL, PUTRAJAYA
LIM YEE LAN JCA
MOHAMAD ARIFF YUSOF JCA
B MAH WENG KWAI JCA
[CIVIL APPEAL NO: C-02-952-2011]
5 JANUARY 2015

C ***CONTRACT:*** *Specific performance – Application for – Settlement agreement between parties – Whether there was agreement reached on extension of contract for mining lease – Whether there was an oral agreement – Demand made by first respondent for payment of USD1 million to purchase right to mine – Whether first respondent's conduct an anticipatory breach of settlement agreement – Whether contract should be treated as subsisting – Whether appellant's claim allowed*

D ***CIVIL PROCEDURE:*** *Parties – Company – Lifting of corporate veil – Application for – Whether second respondent incorporated as agent for first respondent – Whether true status of second respondent should be revealed – Whether proper case to order lifting of corporate veil*

E The first respondent was the holder of a mining lease to mine for iron ore on a piece of land ('the said land') for the period of 1 October 2001 till 31 December 2007. The appellant was a mining company which had been granted permission to carry on mining on the said land. On 20 June 2005, the appellant and the first respondent entered into a settlement agreement to settle all outstanding legal proceedings against each other. It was mutually F agreed that with the payment of specified sums by the appellant to the first respondent, the settlement agreement was to be the governing contract between the parties for the remaining period of the mining lease. The appellant continued its mining operations till December 2007 paying a tribute of RM10 per metric dry ton on the iron ore extracted pursuant to the G settlement agreement. It was the appellant's case that on 10 October 2007, its managing director ('PW1') had met the first respondent for negotiations on the tribute to be payable during the extended period at the Seasons Hotel, Kuantan, and that it was orally agreed that the appellant would pay a tribute at the rate of RM20 per metric dry ton on all iron ore extracted. The first H respondent, however, denied any such agreement, and laid down his terms for an extension of the contract, where the appellant was required to pay a sum of USD1 million to purchase the right to mine for five years and to pay a tribute at the rate of RM35 per metric dry ton for all iron ore extracted. The appellant filed its claim to protect its interests in the High Court for, *inter* I *alia*, an order of specific performance of the settlement agreement. In his counterclaim, the first respondent, *inter alia*, sought an order to declare the settlement agreement cancelled and of no further effect and that there was no agreement reached on the extension of the contract. The application for an

extension of the mining lease was made in the name of the first respondent but at the request of the first respondent, the lease was transferred into the name of the second respondent. The appellant's cause of action against the second respondent was that it was the alter ego of the first respondent and sought to lift the corporate veil of the second respondent. The High Court dismissed the appellant's claim save for an order that the stockpile of iron ore on the land belonged to the appellant. Dissatisfied, the appellant filed its appeal against the said decision. The issue that arose was whether there was an oral agreement reached between the appellant and the first respondent on the extension of the contract and the new rate of tribute payable by the appellant to the first respondent.

Held (allowing appeal)
Per Mah Weng Kwai JCA delivering the judgment of the court:

(1) There was no dispute that there was a meeting held between PW1, the first respondent and his wife at the Seasons Hotel on 10 October 2007. The first respondent had authorised PW1 to attend to the application for the extension of the mining lease with the State Authority and was aware and knew that the appellant was interested to continue with the mining operations. At no time did the first respondent mention to PW1 that the appellant had to pay USD1 million or any other sum for the right to continue with the settlement agreement. Based on the facts of this case, an oral agreement had been reached between the parties. (para 23)

(2) A consideration of the exchange of correspondence between the appellant and the respondents showed that there was an agreement reached on the rate of tribute at RM20 per metric dry ton. The demand by the first respondent for payment of USD1 million to purchase the right to mine for five years was in breach of the settlement agreement as it was agreed therein that the appellant would have the right of first option to continue mining without having to pay any sum for the extension. Thus, the request for the USD1 million was an afterthought and was in clear breach of the settlement agreement. (paras 24 & 25)

(3) The first respondent did not refute the appellant's allegation that the first respondent did not wish to continue working with the appellant as the first respondent had found more lucrative parties to work with. The irresistible inference was that the first respondent had changed his mind on accepting the rate of RM20 per metric dry ton as he stood to gain more financially by working with other lucrative parties. It was correct for the appellant to treat the first respondent's conduct as being an anticipatory breach of the settlement agreement. The appellant had rejected the option to repudiate the contract but instead had elected to treat the contract as subsisting and sue for specific performance. (paras 25 & 28)

(4) The second respondent was incorporated as a 'front' for the first respondent and was in fact an agent of the first respondent. The first respondent remained as the controlling mind and will of the second respondent. Thus, in so far as the cause of action against the second respondent was concerned, it was proper in this case to order the veil of corporation to be lifted to reveal the true status of the second respondent. (paras 30-32)

(5) The appellant and the first respondent had reached an agreement to extend the settlement agreement at the tribute rate payable at RM20 per metric dry ton of iron ore. The judge was also correct to hold that the stockpile of iron ore on the land rightfully belonged to the appellant. The appellant's claim was thus allowed and the respondent's counterclaim was dismissed. (paras 34-36)

Bahasa Malaysia *Translation Of Headnotes*

Responden pertama adalah pemegang pajakan perlombongan untuk melombong bijih besi di sebidang tanah ('tanah tersebut') bagi tempoh 1 Oktober sehingga 31 Disember 2007. Perayu adalah syarikat perlombongan yang telah diberikan kebenaran untuk melombong tanah tersebut. Pada 20 Jun 2005, perayu dan responden pertama telah memasuki satu perjanjian penyelesaian bagi menyelesaikan segala prosiding undang-undang yang belum dijelaskan antara mereka. Ia telah dipersetujui bersama bahawa dengan pembayaran wang jumlah yang tertentu oleh perayu kepada responden pertama, perjanjian penyelesaian adalah menjadi kontrak yang mengawal pihak-pihak yang terlibat untuk baki tempoh pajakan perlombongan. Perayu meneruskan operasi perlombongan sehingga Disember 2007 membayar ufti RM10 setiap tan metrik bijih besi kering yang diekstrak menurut perjanjian penyelesaian. Adalah kes perayu bahawa pada 10 Oktober 2007, Pengarah Urusan syarikat itu ('PW1') telah bertemu dengan responden pertama untuk berunding berkenaan ufti yang perlu dibayar semasa tempoh lanjutan di Hotel Seasons Kuantan, dan bahawa ia telah dipersetujui secara lisan bahawa perayu akan membayar ufti pada kadar RM20 setiap ton metrik bijih besi kering yang diekstrak. Responden pertama, walau bagaimanapun, menafikan terdapat apa-apa persetujuan, dan menetapkan syarat-syaratnya untuk lanjutan masa kontrak, di mana perayu dikehendaki membayar sejumlah USD1 juta untuk membeli hak melombong untuk lima tahun dan untuk membayar ufti pada kadar RM35 per metrik bijih besi kering yang diekstrak. Perayu memfailkan tuntutan untuk melindungi kepentingannya di Mahkamah Tinggi untuk, antara lain, perintah pelaksanaan spesifik perjanjian penyelesaian. Dalam tuntutan balasnya, responden pertama, antara lain, menuntut perintah bagi mengisytiharkan perintah perjanjian penyelesaian dibatalkan dan tidak mempunyai kesan lagi dan tiada perjanjian dicapai berkenaan lanjutan kontrak. Permohonan

lanjutan masa bagi pajakan perlombongan telah dibuat atas nama responden pertama tetapi atas permintaan responden pertama, pajakan telah dipindahkan atas nama responden kedua. Kausa tindakan perayu terhadap responden kedua adalah bahawa ia adalah *alter ego* responden pertama dan membuat tuntutan untuk menyingkap tirai pemerbadanan responden kedua. Mahkamah Tinggi menolak tuntutan perayu tetapi menegakkan perintah bahawa simpanan bijih besi di atas tanah itu adalah kepunyaan perayu. Tidak berpuas hati, perayu memfailkan rayuan terhadap keputusan tersebut. Isu yang timbul adalah sama ada terdapat perjanjian lisan yang tercapai antara perayu dan responden pertama mengenai lanjutan kontrak dan kadar baru ufti yang perlu dibayar oleh perayu kepada responden pertama.

Diputuskan (membenarkan rayuan)
Oleh Mah Weng Kwai HMR menyampaikan penghakiman mahkamah:

(1) Tiada pertikaian bahawa terdapat satu mesyuarat yang diadakan antara PW1, responden pertama dan isterinya di Hotel Seasons pada 10 Oktober 2007. Responden pertama telah memberi kuasa kepada PW1 untuk menangani permohonan lanjutan masa pajakan perlombongan dengan Pihak Berkuasa Negeri dan sedar serta mengetahui bahawa perayu berminat untuk meneruskan operasi perlombongan. Responden pertama pada masa itu tidak menyebut kepada PW1 bahawa perayu harus membayar USD1 juta atau apa-apa jumlah lain untuk mendapatkan hak meneruskan dengan perjanjian penyelesaian. Berdasarkan fakta-fakta kes ini, perjanjian lisan telah dicapai antara pihak-pihak yang terlibat.

(2) Pertimbangan pertukaran surat-menyurat antara perayu dan responden-responden menunjukkan bahawa terdapat satu persetujuan yang dicapai berkenaan kadar ufti RM20 setiap tan metrik bijih besi. Tuntutan oleh responden pertama untuk bayaran USD1 juta bagi membeli hak untuk melombong selama lima tahun adalah pelanggaran perjanjian penyelesaian kerana ia telah dipersetujui bahawa perayu mempunyai hak mendapatkan opsyen pertama untuk meneruskan perlombongan tanpa membayar apa-apa jumlah untuk perlanjutan. Oleh itu, tuntutan USD1 juta adalah sesuatu yang difikirkan kemudian dan adalah dengan jelasnya melanggar perjanjian penyelesaian.

(3) Responden pertama tidak membantah dakwaan perayu bahawa responden pertama enggan meneruskan kerjasama dengan perayu kerana responden pertama telah menemui pihak yang lebih menguntungkan untuk bekerja dengannya. Inferens yang sukar ditolak adalah bahawa responden pertama telah berubah fikiran dalam penerimaan kadar RM20 per metrik bijih besi kering kerana dia berada dalam kedudukan di mana dia boleh mendapatkan keuntungan yang lebih dari segi kewangan melalui kerjasama dengan pihak-pihak lain yang lebih

menguntungkan. Adalah betul untuk perayu menganggap tindakan responden pertama sebagai jangkaan pelanggaran perjanjian penyelesaian. Perayu telah menolak pilihan untuk menafikan kontrak tetapi sebaliknya telah memilih untuk menganggap kontrak sebagai wujud dan membuat tuntutan pelaksanaan spesifik.

(4) Responden kedua telah diperbadankan sebagai 'topeng' untuk responden pertama dan adalah sebenarnya ejen responden pertama. Responden pertama kekal sebagai pengawal fikiran dan kehendak responden kedua. Oleh itu, berkenaan kausa tindakan terhadap responden kedua, adalah wajar dalam kes ini untuk memerintahkan supaya tirai pemerbadanan disingkap bagi mendedahkan status sebenar responden kedua.

(5) Perayu dan responden pertama telah mencapai persetujuan untuk melanjutkan perjanjian penyelesaian pada kadar bayaran ufti RM20 per metrik bijih besi kering. Hakim juga betul apabila memutuskan bahawa simpanan stok bijih besi tanah tersebut adalah kepunyaan perayu. Tuntutan perayu adalah dengan itu dibenarkan dan tuntutan balas responden adalah ditolak.

Case(s) referred to:

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

Hotel Jaya Puri Bhd v. National Union of Hotel, Bar & Restaurant Workers & Anor [1979] 1 LNS 32 HC ***(refd)***

Sivalingam Periasamy v. Periasamy & Anor [1996] 4 CLJ 545 CA ***(refd)***

For the appellant - Bastian Pius Vendargon (R Sarengapani & Gene Anand Vendargon with him); M/s RS Pani & Assocs

For the respondents - Muhammad Nor Izzat Nordin; M/s Jahaberdeen & Co

[Editor's note: Appeal from High Court, Kuantan; Civil Suit No: 22-144-07 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mah Weng Kwai JCA:

Brief Facts

[1] The first respondent was at all material times the holder of a mining lease to mine for iron ore on a piece of land measuring about 1,000 acres in Mukim Keratong in the District of Rompin, Pahang. The licence was for the period from 1 October 2001 till 31 December 2007.

[2] The appellant was at all material times a mining company which had been granted permission to carry on mining on the said land. The appellant paid for the premium, mining tax, survey fees and other expenses before commencing mining operations.

[3] On 20 June 2005, the appellant and the first respondent entered into a settlement agreement to settle all outstanding legal proceedings against each other. It was mutually agreed that with the payment of specified sums by the appellant to the first respondent the settlement agreement was to be the governing contract between the parties for the remaining period of the mining lease.

[4] The appellant continued its mining operations from 20 June 2005 till December 2007 paying a tribute of RM10 per metric dry ton on the iron ore extracted "if the total dry tonnage extracted in the month is 5,000 dry tons or less" pursuant to cl. 9.1 of the settlement agreement.

[5] Clause 13 of the settlement agreement provided that upon expiry of the mining lease and upon an extension of time being granted by the mining authorities to the first respondent, the first respondent would grant to the appellant "first option the right to mine and the rate of tribute and extended period shall be re-negotiated and agreed upon between the parties".

[6] It was further provided in cl. 13 that if the parties could "not agree on the re-negotiations the matter shall be referred to a suitable arbitrator for determination".

[7] It was the appellant's case that its managing director, Mr. Lee Shing U (PW1) had met the first respondent (DW3) and his wife, Datin Razmah binti Zainuddin (DW1) for negotiations on the tribute to be payable during the extended period commencing from 1 January 2008 at the Seasons Hotel in Kuantan on or about 10 October 2007 and that it was orally agreed that the appellant would pay a tribute at the rate of RM20 per metric dry ton on all iron ore extracted.

[8] The first respondent in his defence, not unexpectedly, denied any such agreement to accept a tribute at the rate of RM20 per metric dry ton offered by the appellant. Instead, the first respondent, through his solicitor's letter of 31 December 2007, laid down his terms for an extension of the contract. The appellant was required to:

(i) Pay a sum of USD1 million to 'purchase the right to mine for five years'; and

(ii) Pay a tribute at the rate of RM35 per metric dry ton for all iron ore extracted.

[9] The appellant was to accept the first respondent's offer within seven days from the date of the letter and that in the interim the appellant was "to refrain from carrying out any activity at the site".

[10] The appellant did not respond to the first respondent's solicitor's letter of 31 December 2007 but instead filed its claim to protect its interests in the High Court, Kuantan for *inter alia*, an order of specific performance of the settlement agreement (pertaining to the option); damages; a permanent

injunction; a declaration that the appellant is the rightful owner of the stockpile of iron ore on the land and a declaration that the second respondent is the *alter ego* of the first respondent.

[11] In his counterclaim the first respondent *inter alia*, sought an order to declare the settlement agreement cancelled and of no further effect; that there was no agreement reached on the extension of the contract and the new rate of tribute; an injunction to restrain the appellant from carrying out any mining activity and an order for the appellant to remove all its machinery from the said land.

[12] The application for an extension of the mining lease was made in the name of the first respondent but at the request of the first respondent, the lease was transferred into the name of the second respondent, for a period of five years.

[13] The appellant's cause of action against the second respondent was that it was the *alter ego* of the first respondent with the shareholders and directors of the second respondent being family members of the first respondent. The appellant sought to lift the corporate veil of the second respondent.

[14] In its defence, the second respondent denied it was an agent and *alter ego* of the first respondent.

Decision Of The High Court

[15] After a full trial, the learned judge dismissed the appellant's claim save for an order that the stockpile of iron ore on the land belonged to the appellant.

[16] Being dissatisfied with the decision, the appellant filed its appeal. Neither the first respondent nor the second respondent filed an appeal or cross-appeal against the decision of the learned judge made in respect of the stockpile of iron ore.

Decision Of The Court Of Appeal

[17] Upon reading the written submissions of counsels for the appellant and the respondents and upon hearing the oral submissions of counsels aforesaid, the court unanimously allowed the appeal with costs. The order of the High Court was set aside save for the order on the stockpile of iron ore left on the land. The court held that the settlement agreement between the parties is still binding, valid and subsisting.

[18] Being dissatisfied with the decision, the respondents have filed an application for leave to appeal to the Federal Court.

Grounds Of Decision

[19] Central to the arguments in this appeal is the issue of whether there was an oral agreement reached between PW1, acting on behalf of the appellant and the first respondent on the extension of the contract and the new rate of tribute payable by the appellant to the first respondent.

[20] If the court had agreed with the finding of the learned judge that there was no oral agreement reached between the parties on 10 October 2007 at the Seasons Hotel in Kuantan, then the first respondent would have been quite justified in making his offer of extension upon the new terms as stated in his solicitor's letter of 31 December 2007 to the appellant. And as the appellant chose not to accept the offer (or even make a counter offer) then of course, the settlement agreement would have lapsed upon its expiration on 31 December 2007 and that would have been the end of the appellant's claim.

[21] However, we are of the view that the finding of the learned judge was erroneous as it was against the weight of the evidence adduced. We are of the view that the appellant had successfully proved, on a balance of probabilities, that there was an oral agreement reached between the parties and accordingly, the settlement agreement ought to be extended with the appellant having to pay a tribute at the rate of RM20 per metric dry ton on all iron ore extracted to the first respondent.

[22] We are mindful of the law that an appellate court should be slow to interfere with the findings of fact by a learned trial judge who had the advantage of observing the demeanour of the witnesses and assessing their evidence during the trial. (see *Sivalingam Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545; [1995] 3 MLJ 395 and *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309 FC). But, we are equally mindful of the exception to the general rule, that is, an appellate court is duty bound to intervene and correct erroneous findings of facts by the court where the learned trial judge was plainly wrong in arriving at his/her decision or when there has been insufficient judicial appreciation of the evidence adduced.

[23] We find that on the facts, an oral agreement had been reached on 10 October 2007 between the parties for the following reasons:

(i) The appellant was at all material times carrying on mining activities on the said land and was fully aware that the mining lease would be expiring on 31 December 2007. Thus it would have been in the interest of the appellant to negotiate early with the first respondent on the extension of the settlement agreement and the rate of tribute payable and not to leave things till the last moment. Although the settlement agreement is silent as to when such negotiations were to take place, it was not unreasonable in the circumstances to have the negotiations take place in October 2007 as claimed by PW1;

(ii) It would not have been commercially prudent on the part of the appellant to have negotiations with the first respondent taking place only in December 2007, without giving themselves sufficient time to plan for the future management of their mining operations;

(iii) There is no dispute that there was a meeting held between PW1, the first respondent (DW3) and his wife (DW1) at the Seasons Hotel in Kuantan on 10 October 2007. The first respondent did not deny that the meeting did take place but merely denied the rate of tribute payable was agreed at RM20 per metric dry ton of iron ore;

(iv) The evidence of DW1 on what transpired at the meeting was inconsistent. In her witness statement she had stated that there was a discussion between the parties but that there was no agreement on the rate of RM20 per metric dry ton, whereas in cross-examination she had contradicted herself by saying there was no discussion at all on the new rate to be paid;

(v) The first respondent had authorised PW1 to attend to the application for the extension of the mining lease with the State Authority and was aware that the appellant had engaged K F Lee Mining Consultants to prepare the relevant report to be submitted with the application. The first respondent was aware and knew that the appellant was interested to continue with the mining operations and at no time did the first respondent mention to PW1 that the appellant had to pay USD1 million or any other sum for the right to continue with the settlement agreement. The demand for the USD1 million was made much later in December 2007.

[24] A consideration of the exchange of correspondence between the solicitors for the appellant and the respondents is helpful and crucial to the determination of the singular issue of whether there was agreement reached on the rate of tribute at RM20 per metric dry ton. We refer to the letters at pp. 15 to 21 in the appellant's core bundle as follows:

(i) Letter dated 28 November 2007 from the first respondent's solicitors to the appellant's solicitors inquiring whether the appellant was still interested to mine the said land and asked for the appellant's offer on the new rate of tribute;

(ii) Letter dated 10 December 2007 from the appellant's solicitors giving formal notice that the appellant was interested in continuing with the mining in accordance with cl. 13 of the settlement agreement; that the appellant was exercising the right of first option to mine and that the appellant had agreed after discussions with the first respondent to pay the tribute sum of RM20 per metric dry ton;

(iii) Reminder letter dated 24 December 2007 from the appellant's solicitors to the first respondent's solicitors requesting for the response from the first respondent;

(iv) Letter dated 27 December 2007 from the appellant's solicitors to the first respondent's solicitors highlighting the urgency of the matter and seeking a prompt reply;

(v) Letter dated 31 December 2007 from the appellant's solicitors to the first respondent's solicitors expressing the appellant's concern of a 'lock out' at the mine by the first respondent as the first respondent had found more lucrative parties to work with and that the first respondent was not going to continue working with the appellant;

(vi) Letter dated 31 December 2007 from the first respondent's solicitors to the appellant's solicitors rejecting the appellant's offer of RM20 per metric dry ton and instead requesting for the payment of the sum of USD1 million to purchase the right to mine for five years and the payment of tribute at the rate of RM35 per metric dry ton for the iron ore extracted. The appellant was given seven days to respond and in the meanwhile the appellant was to cease its mining operations.

[25] Upon a careful reading and evaluation of all the letters set out above, the following salient findings can be made namely:

(a) At no time did the first respondent outrightly deny that there was an agreement reached between the parties that the rate of tribute was agreed at RM20 per metric dry ton. One would have thought that the first respondent would have immediately instructed his solicitors to deny the figure of RM20 per metric dry ton mentioned in para. 4 of the appellant's solicitor's letter of 10 December 2007. In fact, right up to 31 December 2007, the first respondent never once referred to the offer of RM20 per metric dry ton specifically in his solicitor's letter;

(b) The demand by the first respondent for payment of USD1 million "to purchase the right to mine for five years" is in breach of the settlement agreement as it was agreed therein that the appellant would have the right of first option to continue mining without having to pay any sum for the extension. Thus this request for the USD1 million was an afterthought and was in clear breach of the settlement agreement;

(c) The rate of tribute payable by the appellant according to the settlement agreement was RM10 per metric dry ton and on 10 October 1987 the appellant was prepared to pay RM20 per metric dry ton, an increase of 100% of the rate. And yet the first respondent demanded a rate of RM35 per metric dry ton which is an increase of 250% of the rate. We are of the view that when the first respondent rejected the appellant's figure, it was incumbent on the first respondent, with the evidential burden shifting to him, to show that the rate of RM20 per metric dry ton was too low and unreasonable and that the rate of RM35 per metric dry ton was proper and reasonable. This the first respondent failed to do.

(d) The first respondent in his solicitor's letter of 31 December 2007 did not refute the appellant's allegation that the first respondent did not wish to continue working with the appellant as the first respondent had found more lucrative parties to work with;

(e) The irresistible inference is that the first respondent had changed his mind on accepting the rate of RM20 per metric dry ton as he stood to gain more financially by working with other lucrative parties.

The Non-referral Of The Dispute To Arbitration Issue

[26] We are of the view that nothing much turns on this issue.

[27] Although there is provision in the settlement agreement for a dispute to be referred to arbitration, the fact that neither party took steps to refer to a suitable arbitrator did not disentitle the appellant from filing its claim in court for the several reliefs sought.

[28] It was evident that the first respondent had threatened the appellant with a 'lock out' if the appellant did not agree with the first respondent's terms. It was correct for the appellant to treat the first respondent's conduct as being an anticipatory breach of the settlement agreement. The appellant had rejected the option to repudiate the contract but instead had elected to treat the contract as subsisting and to sue for specific performance.

[29] If the first respondent had wanted to seriously challenge the appellant's claim from being filed in court, he could have applied for a stay of the proceedings pending reference to the arbitrator. The first respondent did not do so and had in fact submitted to the jurisdiction of the court by filing his defence and counterclaim.

[30] In so far as the cause of action against the second respondent is concerned, we are of the view that it is proper in this case to order the veil of incorporation to be lifted to reveal the true status of the second respondent.

[31] The second respondent was incorporated with the first respondent being the majority shareholder, holding 109,998 shares. The other shareholders are his wife (DW1) and children. The first respondent, his wife and their children are directors of the company.

[32] It will be remembered from the facts that the application for the extension of the lease was made in the name of the first respondent but at the request of the first respondent, the mining lease was extended for five years in the name of the second respondent. It is obvious that the second respondent was incorporated as a 'front' for the first respondent and is in fact an agent of the first respondent. The first respondent remained as the controlling mind and will of the second respondent (see *Hotel Jaya Puri Bhd v. National Union of Hotel, Bar & Restaurant Workers & Anor* [1979] 1 LNS 32; [1980] 1 MLJ 109 FC per Salleh Abas FJ).

[33] The court is satisfied that the mining lease was for all intents and purposes extended in favour of the first respondent.

[34] In light of the above facts, we are of the view that the appellant and the first respondent had reached an agreement on 10 October 2007 to extend the settlement agreement at the tribute rate payable at RM20 per metric dry ton of iron ore.

[35] We are further of the view that the learned judge was correct to hold that the stockpile of iron ore on the land rightfully belonged to the appellant.

[36] In the result, the appellant's appeal was allowed with costs, that is, the claim was allowed and the respondent's counterclaim was dismissed. The deposit was refunded.